

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 01, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RANDEY THOMPSON.

No. 2:21-CV-00252-SAB

Plaintiff,

V.

CENTRAL VALLEY SCHOOL

DISTRICT NO. 365; BEN SMALL.

individually as Superintendent of the

Central Valley School District, CENTRAL

VALLEY SCHOOL DISTRICT NO. 365

BOARD OF EDUCATION and in their

individually capacity BOARD OF

EDUCATION MEMBERS and

DIRECTORS DEBRA LONG, MYSTI

RENEAU, KEITH CLARK, TOM

KINGUS, and CYNTHIA MCMULLEN

Defendants.

**ORDER DENYING
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

Before the Court is Plaintiff's Motion for Temporary Restraining Order and

Preliminary Injunction, ECF No. 7. A hearing on the motion was held on October

29, 2021, in Spokane, Washington. Plaintiff was represented by Robert Greer and

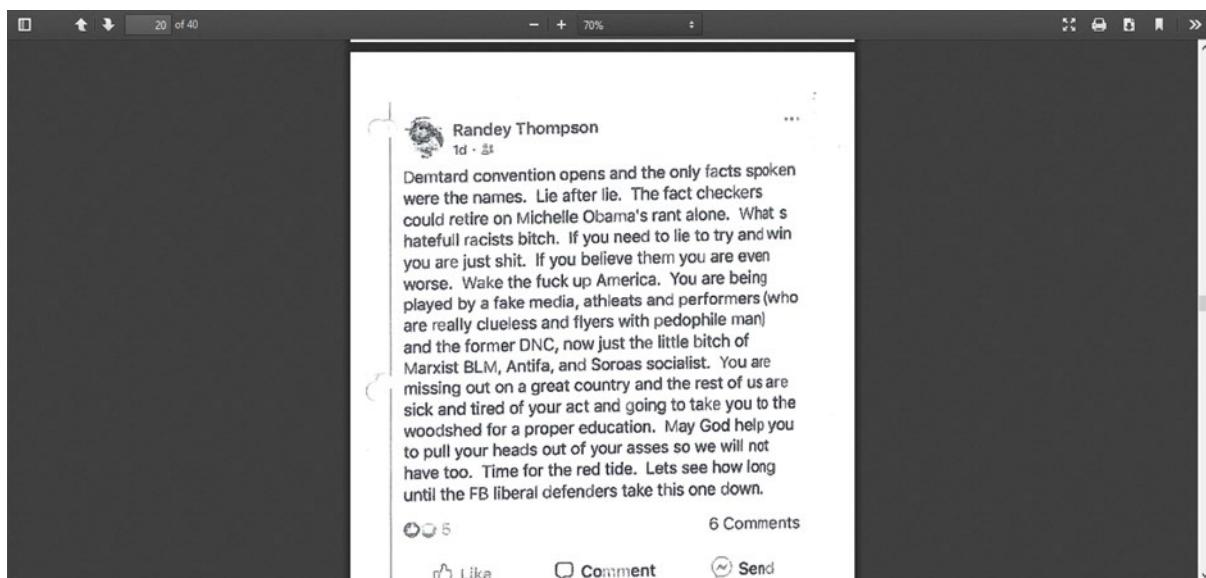
**ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY
RESTRANING ORDER AND PRELIMINARY INJUNCTION ~ 1**

1 Michael Love. Defendant was represented by Michael McFarland and Rachel
 2 Platin.

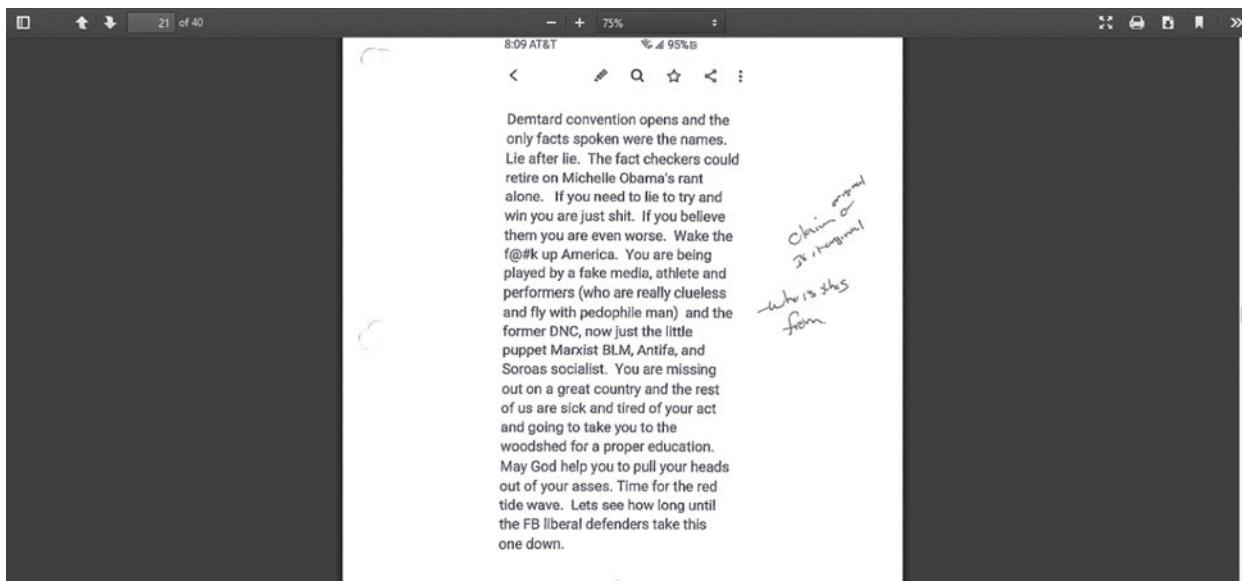
3 At the conclusion of the hearing, the Court orally denied Plaintiff's Motion
 4 for Temporary Restraining Order and Preliminary Injunction. This Order
 5 memorializes the Court's oral ruling.

6 **Background**

7 Prior to August 2020 Plaintiff was an assistant principal at Evergreen Middle
 8 School, which is in the Central Valley School District (CVSD). He started working
 9 at CVSD in 1991. After watching the Democratic National Convention, Plaintiff
 10 posted his thoughts about the convention on Facebook. The following post was
 11 seen on Facebook:



22 Although he maintains it was a private post to a select group, it appears it
 23 was posted so that others could see it. Plaintiff asserts that he did not post the
 24 above-captured post. Instead, he maintains that he posted the following:



In the ensuing months, Plaintiff maintained that his Facebook account was hacked and someone else posted the first example of the post.

One person who viewed the first Facebook post believed it to be offensive and the post was forwarded on to at least three other CVSD employees until it reached Ben Small, the Superintendent of CVSD. He also thought it was offensive and placed Plaintiff on administrative leave on August 19, 2020. Eventually, Plaintiff was demoted from his assistant principal job and is now teaching in the classroom for CVSD.

Plaintiff filed suit on August 23, 2021, alleging claims for violation of his First Amendment rights. Ultimately, he is seeking to be reinstated as assistant principal at Evergreen Middle School, as well as compensatory and special damages, punitive damages and attorneys' fees.

On September 20, 2021, Plaintiff filed his Motion for Temporary Restraining Order and Preliminary Injunction.

Motion Standard

“A preliminary injunction is a matter of equitable discretion and is ‘an extraordinary remedy that may only be awarded upon a clear showing that a

1 plaintiff is entitled to such relief.”” *California v. Azar*, 911 F.3d 558, 575 (9th Cir.
 2 2018) (quoting *Winter v. NRDC*, 555 U.S. 7, 22 (2008)). “A party can obtain a
 3 preliminary injunction by showing that (1) it is ‘likely to succeed on the merits,’
 4 (2) it is ‘likely to suffer irreparable harm in the absence of preliminary relief,’ (3)
 5 ‘the balance of equities tips in [its] favor,’ and (4) ‘an injunction is in the public
 6 interest.’” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)
 7 (quoting *Winter*, 555 U.S. at 20).

8 The Ninth Circuit uses a “sliding scale” approach in which the elements are
 9 “balanced so that a stronger showing of one element may offset a weaker showing
 10 of another.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quotation
 11 omitted). When the government is a party, the last two factors merge. *Drakes Bay*
 12 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). This means that when
 13 the government is a party, the court considers the balance of equities and the public
 14 interest together. *Azar*, 911 F.3d at 575. “[B]alancing the equities is not an exact
 15 science.” *Id.* (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 609
 16 (1952) (Frankfurter, J., concurring) (“Balancing the equities . . . is lawyers’ jargon
 17 for choosing between conflicting public interests”)).

18 A plaintiff seeking preliminary relief must “demonstrate that irreparable
 19 injury is likely in the absence of an injunction.” *Winter*, 555 U.S. at 22. The
 20 analysis focuses on irreparability, “irrespective of the magnitude of the injury.”
 21 *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999). Economic harm is
 22 not normally considered irreparable. *L.A. Mem’l Coliseum Comm’n v. Nat’l*
 23 *Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980).

24 Due to the exigent nature of a preliminary injunction, a court may consider
 25 hearsay and other evidence that would otherwise be inadmissible at trial. *Johnson*
 26 *v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009).

27 To the extent that Plaintiff is seeking money damages and back pay for the
 28 loss of his administrative job, his remedy at law is adequate. *See Stanley v. Univ. of*

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1 *S. Cal.*, 13 F.3d 1313, 1321 (9th Cir. 1994). Thus, the only issue currently before
 2 this Court is whether Plaintiff should be reinstated as Assistant Principal at
 3 Evergreen Middle School.

4 Preliminary relief may take two forms: it may be prohibitory or mandatory
 5 in nature. “A prohibitory injunction prohibits a party from taking action and
 6 preserves the status quo pending a determination of the action on the merits.”
 7 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878
 8 (9th Cir. 2009) (alterations and quotation marks omitted). A mandatory injunction
 9 orders a responsible party to “take action.” *Garcia v. Google, Inc.*, 786 F.3d 733,
 10 740 (9th Cir. 2015). It “goes well beyond simply maintaining the status quo
 11 pendente lite and is particularly disfavored.” *Stanley*, 13 F.3d at 1320 (quotations
 12 omitted). The Ninth Circuit has observed that “courts should be extremely cautious
 13 about issuing a preliminary injunction” in those circumstances. *Martin v. Int'l
 14 Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984). When a mandatory
 15 preliminary injunction is requested, the district court should deny such relief unless
 16 the plaintiff can establish that the facts and law clearly favor him, not simply that
 17 he is likely to succeed. *Garcia*, 786 F.3d at 740. Consequently, “[i]n general,
 18 mandatory injunctions are not granted unless extreme or very serious damage will
 19 result and are not issued in doubtful cases or where the injury complained of is
 20 capable of compensation in damages.” *Marlyn Nutraceuticals*, 571 F.3d at 879.

21 Analysis

22 Here, the Court finds that Plaintiff has not meet the requirements for
 23 obtaining a mandatory preliminary injunction. First, Plaintiff cannot show
 24 irreparable harm in the absence of an injunction. Plaintiff seems to be arguing that
 25 simply because he is alleging his First Amendment rights are violated, the Court
 26 should find he has suffered irreparable harm. But the cases relied on by Plaintiff
 27 for that assertion deal with prior restraint of speech by the government. *See e.g.*
 28 *Elrod v. Burns*, 427 U.S. 347 (1976) (holding that retention of government jobs

1 cannot be based on employee's political belief or political affiliation); *Reno v.*
2 *ACLU*, 521 U.S. 844 (1997)(challenging the constitutionality of provisions of
3 Communications Decency Act seeking to protect minors from harmful material on
4 internet). Here, Plaintiff is not arguing that CVSD is currently restraining his
5 speech. Instead, he asserts CVSD is retaliating against him for speech that was
6 made in the past. Moreover, Plaintiff is still employed with CVSD. Because his
7 salary is significantly less, however, it may be that Plaintiff is experiencing harm,
8 but it is clear the harm is not "irreparable."

9 Additionally, Plaintiff has not shown that the law and facts are clearly in his
10 favor, or that there are serious questions going to the merits. There is nothing in the
11 record to suggest that CVSD took any adverse action because of Plaintiff's
12 political views or his affiliation with any political party. Rather, the record strongly
13 suggests that CVSD took the action it did because of Plaintiff's use of certain
14 words, including using the term "Demtard," calling the former First Lady a racist
15 "bitch," using the term "short bus" in a derogatory manner, and calling students
16 "snowflakes" and "Tide Pod challenged," and because it believed that not only did
17 Plaintiff not cooperate with the investigation, but he also lied to school officials.

18 In sum, Plaintiff has not met his burden of showing that the requested
19 preliminary injunction is required or proper.

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RESTRANING ORDER AND PRELIMINARY INJUNCTION ~ 6**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Temporary Restraining Order and Preliminary
3 Injunction, ECF No. 7, is **DENIED**.

4 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
5 and forward copies to counsel.

6 **DATED** this 1st day of November 2021.



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10 Stanley A. Bastian

11 Stanley A. Bastian
12 Chief United States District Judge
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